

management costs consisting of a maximum of 10 percent of the planning and project activities awarded to the State, each fiscal year under FMA and SRL, respectively. These costs must be included in the application to FEMA. An Indian tribal government applying directly to FEMA is eligible for management costs consisting of a maximum of 10 percent of grants awarded for planning and project activities under the SRL and FMA programs respectively.

(ii) Subgrantee. Subapplicants may include a maximum of 5 percent of the total funds requested for their subapplication for management costs to support the implementation of their planning or project activity. These costs must be included in the subapplication to the State.

(2) *Indirect costs.* Indirect costs of administering the FMA and SRL programs are eligible as part of the 10 percent management costs for the grantee or the 5 percent management costs of the subgrantee, but in no case do they make the recipient eligible for additional management costs that exceed the caps identified in paragraph (a)(1) of this section. In addition, all costs must be in accordance with the provisions of part 13 of this chapter and Office of Management and Budget Circular A-87.

(b) *Pre-award costs.* FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify

the grantee and FEMA of all benefits that it receives or anticipates from other sources for the same purpose. FEMA will reduce the subgrant award by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA grant funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

§ 79.9 Grant administration.

(a) The Grantee must follow FEMA grant requirements, including submission of performance and financial status reports, and shall follow adequate competitive procurement procedures. In addition, grantees are responsible for ensuring that all subgrantees are aware of and follow the requirements contained in part 13 of this chapter.

(b) During the implementation of an approved grant, the State POC may find that actual costs are exceeding the approved award amount. While there is no guarantee of additional funding, FEMA will only consider requests made by the State POC to pay for such overruns if:

(1) Funds are available to meet the requested increase in funding;

(2) The amended grant award meets the cost-share requirements identified in this section; and

(3) The total amount obligated to the State does not exceed the maximum funding amounts set in § 79.4(a)(2).

(c) Grantees may use cost overruns from ongoing subgrants to offset overruns incurred by another subgrant(s)

awarded under the same grant. All costs for which funding is requested must have been included in the original application's cost estimate.

(d) For all cost overruns that exceed the amount approved under the grant, and which require additional Federal funds, the State POC shall submit a written request with a recommendation, including a justification for the additional funding to the Regional Administrator for a determination. If approved, the Regional Administrator shall increase the grant through an amendment to the original award document.

(e) At the time of closeout, FEMA will recapture any funds provided to a State or a community under these programs if the applicant has not provided the appropriate matching funds, the approved project has not been completed within the timeframes specified in the grant agreement, or the completed project does not meet the criteria specified in this part.

PART 80—PROPERTY ACQUISITION AND RELOCATION FOR OPEN SPACE

Subpart A—General

Sec.

80.1 Purpose and scope.

80.3 Definitions.

80.5 Roles and responsibilities.

Subpart B—Requirements Prior to Award

80.7 General.

80.9 Eligible and ineligible costs.

80.11 Project eligibility.

80.13 Application information.

Subpart C—Post-Award Requirements

80.15 General.

80.17 Project implementation.

80.19 Land use and oversight.

Subpart D—After the Grant Requirements

80.21 Closeout requirements.

AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p.

412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 72 FR 61743, Oct. 31, 2007, unless otherwise noted.

Subpart A—General

§ 80.1 Purpose and scope.

This part provides guidance on the administration of FEMA mitigation assistance for projects to acquire property for open space purposes under all FEMA hazard mitigation assistance programs. It provides information on the eligibility and procedures for implementing projects for acquisition and relocation of at-risk properties from the hazard area to maintain the property for open space purposes. This part applies to property acquisition for open space project awards made under any FEMA hazard mitigation assistance program. This part supplements general program requirements of the funding grant program and must be read in conjunction with the relevant program regulations and guidance available at <http://www.fema.gov>. This part, with the exception of § 80.19 Land use and oversight, applies to projects for which the funding program application period opens or for which funding is made available pursuant to a major disaster declared on or after December 3, 2007. Prior to that date, applicable program regulations and guidance in effect for the funding program (available at <http://www.fema.gov>) shall apply. Section 80.19 Land use and oversight apply as of December 3, 2007 to all FEMA funded acquisitions for the purpose of open space.

§ 80.3 Definitions.

(a) Except as noted in this part, the definitions applicable to the funding program apply to implementation of this part. In addition, for purposes of this part:

(b) *Applicant* is the State or Indian tribal government applying to FEMA for a grant, and which will be accountable for the use of the funds.

(c) *Grantee* means the State or Indian tribal government to which FEMA awards a grant and which is accountable for the use of the funds provided. The grantee is the entire legal entity, even if only a particular component of